

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JOE BOYDEN,

Plaintiff,

v.

Civ. No. 07-00793 MV/RLP

WERNER ENTERPRISES, INC.,  
a Nebraska corporation, and  
MICHAEL BAKER,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff's Motion to Compel Production of Employment File Materials. Plaintiff sought personnel and employment records of Defendant Baker, who at the time of his motor vehicle accident with Plaintiff was an employee of Werner Enterprises, Inc. ("Werner"). Werner produced Baker's "driver qualification file" and then filed a Supplemental Response stating that two other documents had been located but were not being produced because they constituted inadmissible subsequent remedial measures.

In its response to Plaintiff's Motion to Compel, Werner argues that the two documents in question, in addition to being inadmissible pursuant to Fed.R.Evid. 407, also might be deemed privileged under a theory of self-critical analysis.

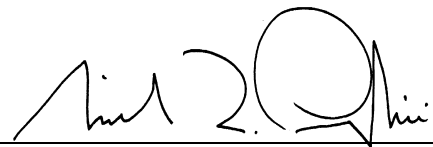
Having considered the parties' arguments in their well-presented memoranda, the Court finds that the documents shall be produced. As the parties recognize, discoverability is not the same as admissibility and the Court cannot say, given the sparse information it has, that these documents would not lead to discovery of admissible evidence or under

some circumstances be admissible under Fed.R.Evid. 407. See *Swank v. Zimmer, Inc.*, 2004 WL 5254172, \*\*1-2 (D. Wyo. 2004) (unpublished decision); *Bohannon v. Honda Motor Co., Ltd.*, 127 F.R.D. 536, 541 (D. Kan. 1989). The Court declines to recognize a self-critical privilege on the documents in question.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Compel Production of Employment File Materials [Doc. 30] is granted; and

IT IS FURTHER ORDERED that the documents shall be produced within ten (10) days of entry of this Order.

IT IS SO ORDERED.



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Richard L. Puglisi  
United States Magistrate Judge